

JAMES C. HARRISON, State Bar No. 161958
THOMAS A. WILLIS, State Bar No. 160989
KAREN GETMAN, State Bar No. 136285
REMCHO, JOHANSEN & PURCELL, LLP
201 Dolores Avenue
San Leandro, CA 94577
Phone: (510) 346-6200
FAX: (510) 346-6201

Attorneys for Plaintiffs
Carole Migden, Friends of Carole Migden
Committee, and Re-Elect Senator Carole
Migden Committee

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CAROLE MIGDEN, et al.,

Plaintiffs,

vs.

CALIFORNIA FAIR POLITICAL PRACTICES
COMMISSION, et al.,

Defendants.

No.: 2:08-CV-00486-EFB

**DECLARATION OF JAMES C. HARRISON
IN SUPPORT OF PLAINTIFFS' MOTION
FOR PRELIMINARY INJUNCTION**

Hearing:

Date: April 16, 2008

Time: 10:00 a.m.

Ctrm.: 25

(The Honorable Edmund F. Brennan)

DECLARATION OF JAMES C. HARRISON

I, James C. Harrison, declare under penalty of perjury as follows:

1. I am a partner at the law firm of Remcho, Johansen & Purcell, LLP, which is counsel to plaintiffs in this action. I have been representing Senator Carole Migden in her discussions with the California Fair Political Practices Commission concerning the Senator's ability to spend campaign funds that she raised for prior elections by transferring those funds to the committee she established for her 2008 campaign for re-election to the state Senate.

2. Attached as Exhibit A to this declaration is a true and correct copy of a letter that I received from Amanda Saxton, the Chief of the Enforcement Division of the Fair Political Practices Commission, on or about October 29, 2007. In the letter, Ms. Saxton instructs Senator Migden that she must refrain from spending on her 2008 re-election campaign the funds that had been raised before Proposition 34 took effect because the FPPC believes those funds are "surplus" within the meaning of California Government Code section 89519. Senator Migden currently has approximately \$647,000 in pre-Proposition 34 funds.

3. Since receiving Ms. Saxton's letter, we have worked diligently with the FPPC to resolve the questions presented by this motion. We presented evidence that the funds were transferred out of Senator Migden's prior committees before they became surplus, although admittedly the transfers were not reported properly on the campaign reports. We pointed out that the FPPC had granted a waiver of section 89519 to state Senator Ellen Corbett, who asked the FPPC to permit her to use campaign funds that had become "surplus" in a future election. We also provided a citation of a California Attorney General opinion which explained that the Attorney General had opined that section 89519 is unconstitutional. We asked the FPPC to allow Senator Migden to use her pre-Proposition 34 funds, as it had Senator Corbett. Our discussions culminated in a meeting at the FPPC's offices on February 15, 2008, at which time Ms. Saxton informed us that our proposal was not acceptable to the FPPC, and that Senator Migden could not spend any of her pre-Proposition 34 funds on her 2008 re-election campaign. At that time, we informed Ms. Saxton that we had no choice but to file an action for declaratory and injunctive relief to secure Senator Migden's First Amendment right to spend her campaign funds on her current election effort.

1 4. Attached as Exhibit B to this declaration is a true and correct copy of an opinion
2 issued by the Fair Political Practices Commission on April 24, 2006 in response to a request from
3 attorney Ash Pirayou on behalf of Senator Ellen Corbett. In this opinion, the FPPC approved Senator
4 Corbett's request for an exception from Government Code section 89519 so that she could use her pre-
5 Proposition 34 funds in a future election.

6 5. Attached as Exhibit C to this declaration is a true and correct copy of an opinion
7 issued by then-Attorney General Dan Lungren on August 9, 1995 in response to a request from then-
8 Assemblymember Mickey Conroy. In this opinion, the Attorney General opined that Government
9 Code section 89519, which is at issue in this case, is unconstitutional.

10 6. Attached as Exhibit D to this declaration is a true and correct copy of pages
11 from the Form 460 Recipient Committee Campaign Statement filed by the Friends of Phil Angelides
12 Committee covering the period from January 1, 2003 through June 30, 2003. By law, state candidates
13 who raise or spend \$50,000 or more must file such campaign committee reports electronically through
14 the California Secretary of State's online campaign disclosure program. Cal. Gov't Code § 84605.
15 The electronically-filed reports are available for public viewing, downloading and printing at the
16 Secretary of State's Cal-Access website, <http://cal-access.sos.ca.gov/>, from which we viewed and
17 downloaded copies of the documents attached as Exhibit D. The pages that are included in Exhibit D
18 include: the cover page showing the name of the committee and date of the report; the summary page
19 showing the beginning cash balance, adjustments from contributions, transfers and expenditures, and
20 the ending cash balance for the reporting period; and a page showing the transfer of \$8,405,546.95
21 from the Friends of Phil Angelides Committee to the Angelides 2006 Committee. Attached as
22 Exhibit E to this declaration is a true and correct copy of pages from the Form 460 Recipient
23 Committee Campaign Statement filed by the Angelides 2006 Committee covering the period from
24 January 1, 2003 through June 30, 2003, which is also downloaded from Cal-Access. Those pages
25 show the receipt of the \$8,405,546.95 transferred from the Friends of Phil Angelides Committee.
26 Mr. Angelides was a candidate in the June 2006 Democratic primary election for Governor, as is
27 shown on page 2 of the excerpts attached as Exhibit E.
28

1 7. Attached as Exhibit F to this declaration is a true and correct copy of pages from
2 the Form 460 Recipient Committee Campaign Statement filed by the Friends of Bill Leonard
3 Committee for the period covering October 20, 2002 through December 31, 2002, downloaded from
4 the Cal-Access website. The Committee was established for Mr. Leonard's re-election to the Board of
5 Equalization, as is shown on page 2 of the report. Page 3 of the report shows a beginning cash balance
6 of \$0 and an ending cash balance of \$50,000.00. Page 13 of the report shows that \$50,000.00 coming
7 in as a transfer from the "Bill Leonard for B.O.E. Committee." Attached as Exhibit G to this
8 declaration is a true and correct copy of pages from the Form 460 Recipient Committee Campaign
9 Statement filed by the Bill Leonard for Board of Equalization Committee for the period covering
10 January 1, 2003 through June 30, 2003, downloaded from the Cal-Access website. Page 9 of that
11 report shows an additional transfer of \$100,193.36 to the Friends of Bill Leonard Committee. Page 3
12 of the report shows an ending cash balance of \$0 after that transfer occurred.

13 I declare under penalty of perjury, under the laws of the State of California, that the
14 foregoing is true and correct and that this declaration was executed on March 7, 2008 at San Leandro,
15 California.

16
17 /s/ James Harrison
 JAMES C. HARRISON

18 (00052776-5)
19
20
21
22
23
24
25
26
27
28

1 **PROOF OF SERVICE**

2 I, the undersigned, declare under penalty of perjury that:

3 I am a citizen of the United States, over the age of 18, and not a party to the within
4 cause or action. My business address is 201 Dolores Avenue, San Leandro, CA 94577.

5 On March 7, 2008, I served a true copy of the following document(s):

6 **Declaration of James C. Harrison in Support of**
7 **Plaintiffs' Motion for Preliminary Injunction**

8 on the following party(ies) in said action:


9 Scott Hallabrin, General Counsel *Attorneys for Defendants*
10 Lawrence T. Woodlock,
11 Senior Commission Counsel
12 Fair Political Practices Commission
13 428 "J" Street, Suite 620
14 Sacramento, CA 95814-2329
15 Phone: (916) 322-5660
16 Fax: (916) 327-2026
17 Email: shallabrin@fppc.ca.gov
18 Email: lwoodlock@fppc.ca.gov

- 14 ☐ **BY UNITED STATES MAIL:** By enclosing the document(s) in a sealed
15 envelope or package addressed to the person(s) at the address above and
16 ☐ depositing the sealed envelope with the United States Postal Service, with
17 the postage fully prepaid.
18 ☐ Placing the envelope for collection and mailing, following our ordinary
19 business practices. I am readily familiar with the businesses' practice for
20 collecting and processing correspondence for mailing. On the same day
21 that correspondence is placed for collection and mailing, it is deposited in
22 the ordinary course of business with the United States Postal Service,
23 located in San Leandro, California, in a sealed envelope with postage fully
24 prepaid.
25 ☒ **BY OVERNIGHT DELIVERY:** By enclosing the document(s) in an envelope
26 or package provided by an overnight delivery carrier and addressed to the persons
27 at the addresses listed. I placed the envelope or package for collection and
28 overnight delivery at an office or a regularly utilized drop box of the overnight
delivery carrier.
☐ **BY MESSENGER SERVICE:** By placing the document(s) in an envelope or
package addressed to the persons at the addresses listed and providing them to a
professional messenger service for service.

1 ☐ **BY FACSIMILE TRANSMISSION:** By faxing the document(s) to the persons
2 at the fax numbers listed based on an agreement of the parties to accept service by
3 fax transmission. No error was reported by the fax machine used. A copy of the
4 fax transmission is maintained in our files.

5 ☒ **BY EMAIL TRANSMISSION:** By emailing the document(s) to the persons at
6 the email addresses listed based on a court order or an agreement of the parties to
7 accept service by email. No electronic message or other indication that the
8 transmission was unsuccessful was received within a reasonable time after the
9 transmission.

10 I declare, under penalty of perjury, that the foregoing is true and correct. Executed on
11 March 7, 2008, in San Leandro, California.

12 
13 _____
14 Kristen Snider
15
16
17
18
19
20
21
22
23
24
25
26
27
28